Supreme Court, U.S.
FILED
JAN 29 1999
CLERK

No. 98-924

In The

Supreme Court of the United States

October Term, 1998

LESLEY GAY BLACKNER

Petitioner,

v.

CONTINENTAL AIRLINES,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Respondent rests its opposition to the petition on the view that under both *Wolens*[1] and *Morales*[2] common law disputes of the sort at issue here are preempted by the ADA.[3] Respondent also argues that *Kiefer*[4] supports its interpretation of *Wolens* and *Morales*. Respondent is wrong.

Morales involved claims based only on state consumer protection statutes, and specifically declined to address whether the ADA preempts other types of claims. 504 U.S. at 390.

In *Wolens*, this Court held that the ADA does not preempt common law contract claims. As *Kiefer* described it, "the issue...was whether the private [contract] actions constituted state enactment or enforcement of any law prohibited by the preemption provision." *Kiefer* at 279 (citations omitted). *Wolens* resolved the issue respecting contract disputes as follows: "A common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement...imposed under State law.'" *Wolens*. at 229 (citation omitted). *Wolens* itself seemed to recognize that while suits respecting private contracts necessarily implicate enforcement of state law, *viz*, that of contracts (*see Kiefer* at 280, 282), such implication without more does not transform contract issues into preempted matter.

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1 *American Airlines v. Wolens*, 513 U.S. 219 (1995).

2 *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992).

3 Airline Deregulation Act, 49 U.S.C. § 41713(b)(1).

4 *Continental Airlines, Inc. v. Kiefer*, 920 S.W.2d 274 (Tex. 1996).

To sum it up, for purposes of determining whether the matter at bar is a foil for a state statute designed to intrude upon the scope of ADA preemption, there is no substantive difference between Wolens' entitled efforts to enforce a contract provision and petitioner's attempt to void one.[5]

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[5] Respondent's position would lead to absurd results. For example, under respondent's view of *Wolens*, a New Jersey court could hear a plaintiff's breach of contract claim, but not a statute of frauds affirmative defense to that claim.

CONCLUSION

For the reasons set forth herein and in petitioner's prior papers, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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